

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 126 of 1990
and
COMPANY PETITION No 212 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

CRAVATEX LIMITED

Versus

VITTA MAZDA LIMITED

Appearance:

MR RM DESAI for Petitioner

MS SONAL H PUJARA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/08/98

ORAL JUDGEMENT

These petitions under Sections 433 and 434 of the Companies Act, 1956 are filed for winding up of Vitta Mazda Ltd., a company registered under the Companies Act, 1956 having its registered office at Navsari.

2. The petitioning creditors in Company Petition Nos. 126 of 1990 and 212 of 1994 are engaged in the business of leasing plants and machineries to various parties and customers. The respondent-Company also

carries on the business of leasing as well as charging co-acceptance fees for lease of plants and machineries to its customers.

3. As far as the petitioner in Company Petition No. 126 of 1990-Cravatex Ltd.-is concerned, the respondent Company had approached Cravatex Ltd. for giving on lease certain equipments to its customer H.R.Desai Stran-Wires Pvt. Ltd. (hereinafter referred to as "Desai Pvt. Ltd."). Letter dated 1.2.1989 from Desai Pvt. Ltd. to the Cravatest Ltd. in support of this fact is produced at Annexure "A" to the petition. The respondent Company had also agreed and confirmed vide letter dated 1.2.1989 (Annexure "B") that the respondent Company would co-accept the lease rental bills to be issued by Cravatex Ltd. to Desai Pvt. Ltd. for which Cravatex Limited would be making payment of co-acceptance fees to the respondent-Company at the rate of Rs.0.25 ps. per Rs.100 per month. Accordingly, by letter dated 1.7.1989 (Annexure "F" colly.), the respondent Company through its Managing Director (Operations) informed the Cravatex Ltd. that the latter may appropriate the monthly lease rentals due to the respondent-Company under the lease agreements referred to therein towards the lease rental dues from Desai Pvt. Ltd. for which the respondent Company had signed bills in the capacity of co-acceptor. Even the cheques of monthly rentals given by the said party Desai Pvt. Ltd. were to be presented with the bankers depending upon the advice from the respondent-Company as is clear from the letter dated 15.6.1989 (Annexure "F" colly.) and from the letter dated 28.9.1989 (Annexure "G"). Thereafter, by letter dated 29.11.1989 (Annexure "I"), the respondent-Company through its General Manager (Operations) sent a statement of the amount due from the respondent-Company to Cravatex Ltd. upto November, 1989 wherein it was clearly mentioned that the amounts due from the petitioner to the respondent-Company were Rs.1,40,296-54 as against which the amounts due from the respondent-Company to Cravatex Ltd. were Rs.1,80,396/and, therefore, a net amount of Rs.40,099-46 was payable by the respondent-Company to M/s Cravatex Ltd. Again by letter dated 1.12.1989 (Annexure "J"), the respondent admitted that the respondent Company had co-accepted the bills for lease rentals drawn by Cravatex Ltd. upon Desai Pvt. Ltd. It was further stated in clear and specific terms that the arrears of the lease rentals accumulated upto November, 1989 after mutual set offs amounting to Rs.40,099-46 would be liquidated by the respondent Company in three equal instalments commencing from 20.12.1989.

On 12.1.1990 (Annexure "L"), M/s Cravatex Ltd. through its learned advocate sent a notice to the respondent Company under Section 434 of the Companies Act, 1956 calling upon the respondent-Company to pay M/s Cravatex Ltd. a sum of Rs. 52,834-37 with interest thereon at the rate of 21% p.a. The respondent-Company did not give any reply to the said statutory notice and, therefore, M/s Cravatex Ltd. filed Company Petition No. 126 of 1990.

4. In response to the notice issued by this Court, affidavit in reply dated 27.9.1991 came to be filed by Pesi Jahangir Nanavati raising the following contentions:-

- (i) The petition is not maintainable as the office of the Company is at Bombay and the petitioner-Company is also in Bombay.
- (ii) The petitioner has not filed bonafide petition but because of business rivalry.
- (iii) The petitioner has not made out a case that the respondent-Company is not able to pay its debts and that the winding up petition cannot be used as a means for recovering debts which are bonafide disputed.
- (iv) There is no privity of contract between the respondent-Company and the petitioner-Company as the contract was between the petitioner-Company and M/s H.R. Desai Stran-Wires Pvt. Ltd. (Desai Pvt. Ltd.). The liability to make payment of the lease rentals was of the said Desai Pvt. Ltd. and not of the respondent-Company. The petitioner has not tried to recover the dues from Desai Pvt. Ltd. and the present petition is a collusive petition between the petitioner and said Desai Pvt. Ltd.

Thereafter, the Vice-President of the respondent-Company filed another affidavit dated 23.3.1992 contending that there was adjustment of certain amounts in year 1987-88 and 1988-89 and that the petition deserves to be dismissed. It was further pointed out that the Company had been in temporary difficulties and the the Company was making rigorous efforts for the recovery from the sub-lessees.

Again affidavit dated 20.3.1995 was filed by Yezdi J. Master, Director of the respondent-Company

reiterating the statements contained in the previous affidavits dated 27.9.1991 and 23.3.1992. It contented that the respondent-Company had never acknowledged nor consented to the variation of the terms of the lease agreements between the petitioner and Desai Pvt. Ltd. and that as per the memorandum of articles of the respondent-Company the respondent's purported action for co-accepting the bills issued by the petitioner is ultra vires and not capable of ratification. It is further submitted that Desai Pvt. Ltd. has been amalgamated with Tensile Steel Ltd., which is a sick industrial unit before the BIFR. It is further submitted that even if the petitioner has any claim against the respondent-Company, the respondent was merely a guarantor whereas Desai Pvt. Ltd. was a principal debtor and the petitioner had not taken any steps against Desai Pvt. Ltd. Therefore, also the petition deserves to be dismissed.

5. In Company petition No. 212 of 1994, the petitioner-Bombay Leasing Co. Pvt.Ltd. (hereinafter referred to as the "Bombay Leasing") is also engaged in the business of leasing and hire purchase of equipments and machinery. The said petitioner was also approached for obtaining such machineries on lease. After negotiations between the parties, two lease agreements dated 16.5.1986 and 14.6.1986 were executed whereby the Bombay Leasing leased various equipments, machineries, fixtures and furniture. They were subsequently released by the respondent Company to various parties in Bombay, Surat and Vapi. The agreement dated 15.3.1991 was also signed between the respondent-Company and the Bombay Leasing whereby the respondent-Company agreed to pay the dues of which the respondent-Company had committed defaults and, therefore, the reschedulement program for payment was agreed between the parties. Even the said agreement was not honoured by the respondent-Company and, thereafter the respondent-Company wrote letters dated 27.3.1993 and 11.11.1993 at Annexures "C1" and "E2" to the Bombay Leasing promising to clear the outstandings as early as possible. Ultimately, on 18.7.1994 (Annexure "G"), the Bombay Leasing served a statutory notice on the respondent-Company calling upon the respondent-Company to pay the amount of Rs.15,16,541/- with interest at the rate of 2% p.m. thereon from 1.4.1994 till payment. The Company sent its reply dated 14.9.1994 (Annexure "H"). Their reply, however, only dealt with a part of the claim made by the petitioner to the tune of Rs. 1,50,000/- and denied the claim of Rs.15,16,541/though the respondent-Company did agree that it had agreed to pay Rs.9,94,654/-.

Thereafter, the Bombay Leasing filed Company Petition No. 212 of 1994.

6. Company Petitions No. 126 of 1990 and 212 of 1994 were admitted on 10.10.1990 and 4.9.1996 respectively. The admission of these Company Petitions was published through advertisements given in Loksatta-Jansatta dated 20.9.1997 and the Indian Express dated 20.9.1997. The public notice was published in the Official Gazette on 2.10.1997.

7. The learned counsel for the respondent-Company prayed for time on the ground that she does not have the papers and that Mr Pardiwala who had earlier appeared as Senior Counsel was not available today. Similar request was made earlier on 18.8.1998. This Court had, therefore, recorded that in view of pendency of these petitions since 1990 and non-payment of dues to a number of creditors for a number of years, the petitions shall be taken up for final hearing on 27.8.1998 and that no further adjournment shall be granted. Hence, the petitions are taken up for final hearing today.

It is also required to noted that earlier when the application for appointment of Provisional Liquidator came up for hearing on 6.5.1998, this Court had directed the respondent-Company to deposit 60% of the dues in this Court before 25.6.1998 to show their bona fides. In spite of the said order dated 6.5.1998 passed in Company Application No. 154 of 1998, the respondent-Company did not deposit any amount. Similar direction was given in respect of the dues of the petitioning creditors in Company Petition Nos. 9 of 1990 and 126 of 1990. The said directions have not been complied with either, but at the instance of the respondent-Company the matters have been adjourned time and again. Hence, when the matters last came up for hearing on 18.8.1998, the learned counsel for the respondent-Company was clearly informed that the matters will be taken up for final hearing today i.e. 27.8.1998 and under no circumstances any request for adjournment will be entertained. The request for adjournment is, therefore, rejected.

8. In both these petitions, the respondent-Company has raised a contention that - "the petition is not maintainable before this Court in as much as the Office of the Company is at Bombay. I say that the petitioner-Company is also in Bombay."

There is, however, no denial of the statement

made in the petition that the registered office of the respondent-Company is at Park View, Lunsui Kui, Navsari and its administrative office at Bombay.

In view of the assertion by the petitioners that the registered office of the respondent-Company is at Navsari in Gujarat and in absence of any specific denial of this statement, the Court overrules the preliminary contention raised by the respondent-Company and treats it as an indication of the absence of bona fide defence on the part of the respondent-Company.

9. At the hearing of these petitions, it was submitted by Mr Puj, learned Counsel for the Bombay Leasing that in view of admission by the respondent-Company about the dues of the Bombay Leasing to the tune of more than Rs. 8 lacs and in view of the admitted non-payment of any amount after February, 1996, the Company has no bona fide dispute to the debts claimed by the Bombay Leasing. It is further pointed out that on 20.4.1995, Mr Pardiwala, learned counsel appearing for the respondent-Company had stated before the Court that the respondent-Company would pay the petitioner an amount of Rs.50,000/- within a week and further amount of Rs.2,50,000/- by 19.6.1995, and that the Company was also prepared to dispose of two immoveable properties before the end of June, 1995 to pay the Bombay Leasing its balance amount of dues from the sale of the said properties which would fetch around Rs.12 lacs. Mr KA Puj for the Bombay Leasing states that inspite of the aforesaid statements made before this Court the amounts of Rs.50,000/- and Rs.2,50,000/- were not paid within the aforesaid stipulated time, but were paid in February, 1996 but the respondent-Company did not pay any further amount from out of the sale proceeds of the immovable properties or otherwise. On the contrary, it is pointed out that even as per the admission made on behalf of the respondent-Company itself, land of the respondent-Company at Navsari is under the attachment of the Income-tax Department for a claim of Rs.70 lacs. It is, therefore, submitted by Mr Puj that the respondent-Company is unable to pay its debts and deserves to be wound up.

10. The learned counsel for the respondent-Company is not in a position to show as to how the respondent-Company would be able to pay the dues of the petitioning creditors running into lacs of rupees when the respondent Company is not shown to be carrying on any business and when, according to its own admission, its property at Navsari is under attachment of the Income-tax Department for a claim of Rs. 70 lacs. It is,

therefore, clear that the Company is unable to pay its debts and otherwise also it appears to be just and equitable to wind up the Company as it is only upon winding up of the Company and upon sale of the assets of the Company that the creditors shall be in a position to recover the amounts due and payable by the respondent-Company to them.

11. In view of the above admitted dues of Bombay Leasing - Petition in Company Petition No. 212 of 1994 to the tune of more than Rs.5 lacs, it would have sufficed to admit the said petition and not consider the merits of Company Petition No. 126 of 1990. However, since the said petition was presented earlier in point of time and in view of the repercussions it would have in the context of Section 441(2) of the Companies Act, 1956, this Court has considered the merits of Company Petition No. 126 of 1990 also.

12. In view of the various documents annexed to the memo of Company Petition No. 126 of 1990 and particularly those referred to in para 3 hereinabove, it is clear that the dispute raised by the respondent-Company in the reply affidavit that it has no privity of contract with Cravatex Ltd. (petitioner in Company Petition No. 126 of 1990) is not at all bona fide. It was at the instance of the respondent-Company and in view of its agreement to co-accept the bills for rental payable by Desai Pvt. Ltd. that the Cravatex Ltd. had entered into one lease agreement with Desai Pvt. Ltd. Company Petition No. 126 of 1990 also, therefore, deserves to be allowed.

13. Accordingly Vitta Mazda Ltd. is ordered to be wound up under the provisions of Section 433 and 434 of the Companies Act, 1956. In view of the provisions of Section 441(2) of the Companies Act, 1956, it is clarified that this order shall relate back to 14.8.1990 when Company Petition No. 126 of 1990 was presented before this Court.

14. The Official Liquidator attached to this Court is appointed as the Liquidator of the respondent-Vitta Mazda Ltd. and the Liquidator shall take over the possession of all the moveable and immoveable assets of the Company. The petitioners shall file a certified copy of this order with the Registrar of Companies under Section 445 of the Companies Act, 1956.

15. Public notice of this order shall be published in

two daily newspapers, Jansatta and Indian Express within thirty days from today.

14. At the request of the learned counsel for the respondent-Company, the operation of this order is stayed for a period of three weeks from today on condition that the respondent-Company shall not sell or dispose of in any manner or part with possession of any of its assets.

Sd/-

August 27, 1998 (M.S. Shah, J.)